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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,439

12/05/2003

Scott A. Burton

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02/23/2009

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EXAMINER

NERANGIS, VICKEY MARIE

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

02/23/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/728,439	Applicant(s) BURTON ET AL.	
	Examiner Vickey Ronesi	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 94-117 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 94-117 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/19/08, 8/28/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. All outstanding rejections are withdrawn in light of applicant's amendment filed on 11/19/2008.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. The new grounds of rejection set forth below are necessitated by applicant's amendment filed on 11/19/2008. In particular, claims 94-117 are new. Thus, the following action is properly made final.

Claim Objections

4. Claims 95 and 98 are objected to because of the following reasons:

With respect to claim 95, the term "the continuous hydrophobic liquid phase" fails to have full antecedent basis. Because it is clear to which the term refers, a 35 USC 112, 2nd paragraph rejection has not been set forth.

With respect to claim 98, it is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the open-ended particle size range in claim 98 is broader than the particle size of claim 97.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 94-117 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 94, a continuous hydrophobic phase comprising a mixture of a "hydrophobic liquid phase" and hydrophobic thermoplastic elastomeric polymer fails to satisfy the written description requirement of 35 USC 112, first paragraph since there does not appear to be a written description requirement of this mixture in the application as originally filed, *In re Wright*, 866 F.2d 422, 9 USPQ2d 1649 (Fed. Cir. 1989) and MPEP 2163. While there is support for a mixture of two hydrophobic polymers wherein one can be liquid on page 13, lines 6-8 of the specification, there is no support for any hydrophobic liquid phase other than polymer.

With respect to claim 95, 112, and 116, a mixture of a mineral oil and a hydrophobic thermoplastic elastomeric polymer fails to satisfy the written description requirement of 35 USC 112, first paragraph since there does not appear to be a written description requirement of this mixture in the application as originally filed, *In re Wright*, 866 F.2d 422, 9 USPQ2d 1649 (Fed. Cir. 1989) and MPEP 2163. While there is support for the use of a continuous hydrophobic

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liquid phase that is mineral oil on page 10, lines 4-7 of the specification, there is no support for a mixture of mineral oil and a hydrophobic thermoplastic elastomeric polymer.

With respect to claims 96-111, 113-115, and 117, they are rejected for being dependent on a rejected claim.

Claim Rejections - 35 USC § 103

6. Claims 94, 95, 101-109, 111, 112, 114, and 115 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cilento (EP 0 512 855).

Cilento discloses an absorbent wound composition comprising a polymeric matrix comprising styrene radial or block type copolymers (i.e., hydrophobic thermoplastic elastomeric polymer) such as styrene-isoprene-styrene (page 3, lines 3-16) and mineral oil and 25-75 wt % absorbing powders comprising absorbent polyacrylates which include salts of crosslinked polyacrylic acid and sodium polyacrylate (page 3, lines 37-43) and other secondary absorbent powders such as sodium calcium alginates and crosslinked sodium carboxymethylcellulose and water soluble hydrocolloids which behave as swelling agents (page 10, lines 32-42). The absorbent powders are superabsorbent because the composition can absorb 500-1000% liquid of their original weight (page 10, lines 15-17). Cilento also discloses the use of a skin protective agent such as zinc oxide (page 3, line 50).

Cilento fails to disclose (i) zinc oxide and (ii) a copolymer of sodium acrylate and acrylic acid as the absorbent polyacrylate.

With respect to (i), Cilento teaches the optional use of pharmacologically active agent such as zinc oxide skin protective agent.

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Given that Cilento discloses the use of zinc oxide for its skin protective properties, it would have been obvious to one of ordinary skill in the art to utilize zinc oxide in the absorbent wound composition of Cilento.

With respect to (ii), Cilento teaches the use of absorbent polyacrylates which include salts of crosslinked polyacrylic acid and sodium polyacrylate.

Given that Cilento teaches the use of homopolymers salts of crosslinked polyacrylic acid and sodium polyacrylate, it would have been obvious to one of ordinary skill in the art to utilize a copolymer of prepared from monomers of the two homopolymers to obtain a copolymer that is capable of behaving as an absorbent and therefore be suitable in the composition of Cilento. It is well settled that it is prima facie obvious to combine two ingredients, each of which is targeted by the prior art to be useful for the same purpose. *In re Lindner* 457 F,2d 506,509, 173 USPQ 356, 359 (CCPA 1972). Further evidence to support the examiner's position is found in applicant's own specification which defines sodium polyacrylate as a copolymer of sodium acrylate and acrylic acid (page 9, lines 13-14).

7. Claims 96-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cilento (EP 0 512 855) in view of Takemori et al (US 5,075,373).

The discussion with respect to Cilento in paragraph 6 above is incorporated here by reference.

While Cilento discloses dispersed absorbing powders, it fails to teach the particle size of the particles in absorbing powder.

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Takemori et al discloses a water-absorbent material like Cilento and teaches that the particle size of the water-absorbent hydrophilic resin is fine, particularly less than 40 microns in order for the hydrophilic resin to be readily dispersed in a hydrophobic material and to prevent the hydrophilic resin from being removed from the hydrophobic material (col. 5, lines 10-20).

Given the desirability of using a water-absorbent material having a particle size less than 40 microns as taught by Takemori et al, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a hydrophilic polymer having a particle size 10 microns and less like presently claimed in order to improve dispersing and retaining properties.

8. Claims 110, 113, 116, and 117 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cilento (EP 0 512 855) in view of Asmus (US 5,270,358).

The discussion with respect to Cilento in paragraph 6 above is incorporated here by reference.

Cilento teaches the use of antimicrobial agents (page 3, line 48), however, it fails to disclose the use of silver oxide.

Asmus discloses a composite comprising a hydrocolloid (i.e., water-swellaable hydrophilic polymer) for use with wound care articles and teaches that antimicrobial agents such as silver oxide are incorporated into the to reduce bacteria level and to minimize infection risk (col. 12, lines 16-49). Asmus teaches that the antimicrobial agents are included in the gel components and is therefore contained within the hydrophilic polymer (col. 12, lines 21-36).

Given that the composition of Cilento teaches the use of antimicrobial agents in wound care articles and further given that antimicrobial agents such as silver oxide as taught by Asmus

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are advantageously used to prevent infection in articles for wound care, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a silver oxide in the composition of Cilento.

Response to Arguments

9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection and the cancellation of all previously pending claims.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

2/19/2009

vr

/Vickey Ronesi/
Examiner, Art Unit 1796